No. 16-466

In The Supreme Court of the United States

Bristol-Myers Squibb Co., Petitioner
v.
Superior Court of California for the County of San Francisco, et al., Respondents

On Writ of Certiorari to the California Supreme Court

BRIEF OF THE ATTORNEYS INFORMATION EXCHANGE GROUP AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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BRIEF OF THE ATTORNEYS INFORMATION EXCHANGE GROUP AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF THE *AMICUS CURIAE*[1]

This brief is submitted on behalf of the Attorneys Information Exchange Group (AIEG). AIEG represents the safety interests of consumers who, unfortunately, are the victims of unsafe motor vehicles that precipitate crashes or needlessly cause injury across the United States. Headquartered in Birmingham, Alabama, AIEG is an organization of over 800 attorneys who practice civil litigation throughout the United States. AIEG was founded in the mid-1970s by attorneys representing burn victims whose vehicles had burst into flames in the wake of collisions. In founding this organization, AIEG's pioneer members have dedicated themselves to the creation of a private cooperative entity that serves both to educate Americans who have suffered catastrophic injury as a result of defectively designed motor vehicles and to coordinate the legitimate acquisition of technical information germane to these citizens' fair and honest legal representation. Over the years, AIEG members have represented the victims of such infamous products as defective Takata airbags and GM cars equipped with faulty ignition switches, the Ford Pinto, GM cars and pick-up

[1] This brief is filed pursuant to a blanket consent filed by all parties. No person other than amicus has authored this brief in whole or in part or made a monetary contribution toward its preparation or submission.

trucks with defectively designed fuel systems (e.g., side saddle fuel tanks), Audi and Toyota vehicles prone to uncontrollable acceleration, and thousands of Ford Explorers with defective Firestone tires that have disintegrated, injuring or killing untold numbers of Americans.

STATEMENT

This case presents the Court with an opportunity to clarify the standards for exercising specific personal jurisdiction in a product case. It might not be apparent that the law would need this Court's clarification in light of the fact that the standards do not appear to have changed in the 38 years since this Court decided *World–Wide Volkswagen v. Woodson*, 444 U.S. 286, 100 S.Ct. 559 (1980). However, the standards for ***general*** jurisdiction were significantly altered in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 564 U.S. 915 (2011). In the ensuing uncertainty from such a dramatic narrowing in the bases for ***general*** jurisdiction, some have inferred that the Court must have also intended to similarly narrow ***specific*** personal jurisdiction. This case presents an excellent chance either to confirm that there has been no seismic shift in the standards for exercising specific personal jurisdiction or to clarify what change the Court intended.

This case also presents an opportunity to clarify the ongoing role of stream-of-commerce analysis in the assessment of specific personal jurisdiction in product cases. In product cases, stream-of-commerce analysis subsumes any discussion of the "relatedness" of the defendant's contacts with the forum because the placement

of the product into the stream of commerce with the intention of directly or indirectly serving the forum is the minimum contact which serves as the predicate for proceeding on to the fairness analysis.

Finally, this case presents the Court with an opportunity to address some of the fairness and practicality issues arising from modern nationwide and global commerce which Justice Breyer found to be factually underdeveloped in the record from *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 131 S. Ct. 2780 (2011). The Court should seize upon the opportunity to elucidate how the Due Process and fairness concerns apply differently in the context of a mult national drug company as contrasted with how those same standards might apply differently to a small Appalachian potter or Kenyan coffee farmer.

SUMMARY OF THE ARGUMENT

This Court recently confirmed a simple two-step process for assessing specific personal jurisdiction:

> First, a court is to determine whether the connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction. Then, in a second step, the court is to consider several additional factors to assess the reasonableness of entertaining the case.

Daimler AG v. Bauman, 134 S. Ct. 746, 762 (2014). Bristol-Myers Squibb invites this Court to needlessly clutter that simple process. Instead, the Court should reconfirm this two-step process.

Some cases outside of the product liability context debate the degree to which a defendant's tortious acts at the heart of the civil action must connect with the forum. This debate is misplaced when transplanted into a product case because a product defendant's specific-jurisdiction-conferring contact with the forum is most typically through its product:

> The stream-of-commerce cases ... relate to exercises of specific jurisdiction in products liability actions, in which a nonresident defendant, acting outside the forum, places in the stream of commerce a product that ultimately causes harm inside the forum.... Flow of a manufacturer's products into the forum may bolster an affiliation germane to ***specific*** jurisdiction, *see, e.g., World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490....

Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2849 (2011). For four decades, this Court has uniformly held that the contacts with a forum are sufficient to reach the second-step fairness determination of specific personal jurisdiction in product cases when the anticipated flow of a manufacturer's product into the forum through the stream of commerce is purposeful and not an isolated occurrence. Bristol-Myers Squibb's efforts to graft a conduct-focused analysis from non-product jurisdiction cases into the specific personal jurisdiction standard for product cases makes little sense because product liability focuses on the product and not the defendant's conduct.

In the case at bar, the claims against Bristol-Myers Squibb and McKesson Corp. (the California-based co-defendant Bristol-Myers Squibb contracted with to distribute Plavix in California and other states) involve the product Plavix, which Bristol-Myers Squibb placed into the stream of commerce with the intent of serving and profiting from the California market (over an eighth of the claimants suffered their harms from Plavix in California), and also involve Plavix marketing associated with Bristol-Myers Squibb's California-based sales representatives. This connection between the California forum and the claims in suit is a sufficient basis at least to reach an assessment of the fairness factors which are part of the separate second step in the process. If Bristol-Myers Squibb believes the California courts' aggregation of the non-California residents' claims with the California residents' identical claims violates its Due Process rights, that argument should be addressed under *Daimler AG*'s second step, which is devoted to such fairness considerations. Instead, Bristol-Myers Squibb wants to frontload its fairness arguments into the first step which focuses, instead, on the narrower question whether the connection between the forum and the claims in suit could justify the exercise of specific jurisdiction. This is a ploy to improperly limit the scope of contacts properly considered when assessing the fairness of exercising jurisdiction.

Finally, Bristol-Myers Squibb requests this Court to adopt a new standard applicable to all future specific jurisdiction cases, and – yet – Bristol-Myers Squibb does not address the implications of its novel standard for other cases. Under Bristol-Myers Squibb's proposed new standard, how would the claimants in the Ford-Firestone debacle have fared? In cases from Florida to Alaska and

Maine to Hawaii, Ford would have claimed it neither designed nor manufactured the Explorer in the forum and so it is subject to suit in Michigan instead of the forum where the crash occurred. Firestone would have offered similar arguments about the design and manufacture of the tire and would have insisted it was susceptible to suit in Tennessee instead of the forum. This would erase four decades of stream-of-commerce jurisprudence and take us back toward *Pennoyer*'s outdated territorial analysis.

Allowing global manufacturers to retreat from specific jurisdiction in forums where they profited from voluminous product sales would have grave consequences: in most states, when the manufacturer escapes the courts' jurisdiction, the local retail seller is left to answer for the defects in the product. Such an inefficient return to *Pennoyer*'s territorial focus is not what this Court intended:

> Since *International Shoe*, "specific jurisdiction has become the centerpiece of modern jurisdiction theory, while general jurisdiction [has played] a reduced role." *Goodyear*, 564 U.S., at ——, 131 S.Ct., at 2854 (quoting Twitchell, The Myth of General Jurisdiction, 101 Harv. L.Rev. 610, 628 (1988)). *International Shoe*'s momentous departure from *Pennoyer*'s rigidly territorial focus, we have noted, unleashed a rapid expansion of tribunals' ability to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum.

Daimler AG, 134 S. Ct. at 755. Contrary to this Court's analysis of the "rapid expansion" of specific personal jurisdiction in *Daimler AG*, Bristol-Myers Squibb interprets the same precedents as presaging an historic restriction back toward *Pennoyer* 's rigidly territorial focus. This would be a jurisprudential mistake.

ARGUMENT

I. THIS COURT SHOULD CLARIFY THAT THE TWO-STEP PROCESS FOR ASSESSING SPECIFIC PERSONAL JURISDICTION ADDRESSED IN *DAIMLER AG* CANNOT BE DISREGARDED.

Bristol-Myers Squibb asks this Court to clarify the process for assessing specific personal jurisdiction, and yet Bristol-Myers Squibb's petition assiduously ignores this Court's recent clarification of how to assess specific personal jurisdiction. Just three years ago, this Court confirmed a two-step process where the first step is to identify whether there is a connection between "the forum and the episode-in-suit" and then the second separate step is to assess the fairness concerns:

> First, a court is to determine whether the connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction. Then, in a second step, the court is to consider several additional factors to assess the reasonableness of entertaining the case.

Daimler AG v. Bauman, 134 S. Ct. 746, 762 (2014). The

Court further noted that such specific jurisdiction "to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum" is "rapidly expanding" (not shrinking as Bristol-Myers Squibb argues):

> *International Shoe*'s momentous departure from *Pennoyer*'s rigidly territorial focus, we have noted, unleashed a rapid expansion of tribunals' ability to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum. Our subsequent decisions have continued to bear out the prediction that "specific jurisdiction will come into sharper relief and form a considerably more significant part of the scene."

Id., 134 S. Ct. at 755. The California court followed this two-step analysis, and yet Bristol-Myers Squibb's arguments make every effort to blur the distinction between these two separate steps.

A. The first step considers the connection between the forum and the episode-in-suit.

As the beginning of the two-step analysis to assess specific jurisdiction, "[f]irst, a court is to determine whether the connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction." *Id.*, 134 S. Ct. at 762. The Supreme Court of California complied with this requirement.

For example, the California court began its analysis by noting that, for 86 claimants, the disputed Plavix was prescribed, administered, and caused harm in the California forum. *See Bristol-Myers Squibb Co. v. Superior Court*, 1 Cal. 5th 783, 788, 377 P.3d 874, 877 (2016), *cert. granted sub nom. Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 827 (2017). This is jurisdictionally significant. "Flow of a manufacturer's products into the forum may bolster an affiliation germane to ***specific*** jurisdiction." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S. Ct. 2846, 2849 (2011) (citing *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559 (1980)). Bristol-Myers Squibb attempts to downplay the jurisdictional significance of the fact that its product flows into the forum where it harmed claimants by conceding that it cannot win its argument against these California claimants. By attempting to limit its challenge to the California forum's jurisdiction to hear the non-Californians' claims, however, Bristol-Myers Squibb has essentially limited its challenge to contesting the courts' powers to consolidate related claims, and this is an argument that falls under *Daimler AG*'s second step (concerning Due Process and fairness), not the first step (whether the connection between the forum and the episode-in-suit could justify jurisdiction).

Next, the California Supreme Court noted that Bristol-Myers Squibb "does not contest that its marketing, promotion, and distribution of Plavix was nationwide and was associated with California-based sales representatives." *Bristol-Myers Squibb*, 1 Cal. 5th at 803, 377 P.3d at 888. This is also jurisdictionally significant because the California claimants and non-California

claimants both assert that Bristol-Myers Squibb negligently and falsely promoted Plavix through a marketing plan associated with Bristol-Myers Squibb's California-based sales force. *Id.*, 1 Cal. 5th at 789, 377 P.3d at 878. As a result, the California-resident and non-California-resident plaintiffs' claims bear this connection to the California forum.

Finally, the Supreme Court of California noted that Bristol-Myers Squibb's contracted with its co-defendant, McKesson Corp., a California resident headquartered in San Francisco. *Id.*, 1 Cal. 5th at 798, 377 P.3d at 884. Those claims for which California plaintiffs and non-California plaintiffs both assert joint liability between Bristol-Myers Squibb and McKesson Corp. will be litigated against McKesson Corp. regardless of whether Bristol-Myers Squibb is present to defend only those claims of the California plaintiffs or present to defend all plaintiffs' claims brought jointly against Bristol-Myers Squibb and McKesson Corp. *Id.*, 1 Cal. 5th at 811, 377 P.3d at 893. This raises indemnification issues under the California contract. *Id.*

While these connections between the claims in suit and the forum are not enough by themselves to fully resolve the issue of specific personal jurisdiction without further consideration of the fairness factors, these forum contacts are sufficient to move onward to the second step in the jurisdictional analysis.

B. The separate second step considers those Due Process and fundamental fairness factors traditionally weighed to assess the reasonableness of entertaining the case.

Once a court has determined that the connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction, "[t]hen, in a second step, the court is to consider several additional factors to assess the reasonableness of entertaining the case." *Daimler AG*, 134 S. Ct. at 762. The California court also complied with this second-step requirement. *See Bristol-Myers Squibb*, 1 Cal. 5th at 808-13, 377 P.3d at 891-94.

Thirty-eight years ago, this Court listed additional factors to be considered when weighing the fairness of exercising specific personal jurisdiction, including (1) the burden on the defendant, (2) the forum State's interest, (3) the plaintiff's interest in effective relief, (4) the interstate judicial system's interest in efficiency, and (5) the interest of the several States in furthering social policies:

> Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court, supra*, 436 U.S., at 92, 98 S.Ct., at 1697, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37, 97 S.Ct. 2569, 2583, n. 37, 53 L.Ed.2d 683

> (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court, supra,* 436 U.S., at 93, 98, 98 S.Ct., at 1697, 1700.

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292, 100 S. Ct. 559, 564–65 (1980).

The California court noted that Bristol-Myers Squibb will be litigating claims of the 86 California plaintiffs in the forum and, consequently, litigating the remaining 592 non-California plaintiffs' identical claims in the same forum would be ***less*** of a burden on Bristol-Myers Squibb than litigating "the claims of these other 592 nonresident plaintiffs in a scattershot manner in various other forums, in potentially up to 34 different states." *Bristol-Myers Squibb*, 1 Cal. 5th at 809, 377 P.3d at 891.

With regard to the forum's interests, the California Supreme Court held that California has an interest in litigating the dispute because Bristol-Myers Squibb's co-defendant is Plavix-distributor McKesson Corp., a California resident. *Id.*, 1 Cal. 5th at 811, 377 P.3d at 893. Regardless of the resolution of Bristol-Myers Squibb's jurisdictional challenge, the claims of California and non-California residents will go forward against McKesson Corp., which has joint liability with Bristol-Myers Squibb and a "corresponding right to indemnification" from Bristol-Myers Squibb. *Id.* The Supreme Court of California also noted California's interest in regulating the conduct of Bristol-Myers Squibb's 250 sales

representatives in California. *Id.*, 1 Cal. 5th at 810, 377 P.3d at 892.

Next, the California court addressed how the California forum furthered the plaintiffs' interests in a convenient and effective forum. *Id.*, 1 Cal. 5th at 811, 377 P.3d at 893.

Finally, the California court addressed how the interests of judicial economy and the related shared goals of the interstate judicial system were furthered by California's exercise of jurisdiction. *Id.*, 1 Cal. 5th at 811–13, 377 P.3d at 893–94. Specifically, the court noted how consolidating both the California and the non-California claimants into a single action is the most efficient course of action. *Id.*

C. Bristol-Myers Squibb seeks to blur the distinction between these two separate steps by cloaking the first step in the garments of the fundamental fairness factors when those considerations have traditionally been part of the second step.

Although the fairness analysis occurs in the second step under *Daimler AG*, Bristol-Myers Squibb cannot prevail on this second step and so Bristol-Myers Squibb attempts to cloud the distinction between the first step (regarding the contact between the issue in suit and the forum) and the second step (regarding fairness). This sleight of hand was called out by the California Supreme Court:

> BMS does not argue that the assertion of jurisdiction in this case would be fundamentally unfair, but does advance several arguments it contends defeat the claim that their causes of action arose from or are related to its contacts with California. Analytically, these arguments are more pertinent to consideration of whether the exercise of specific jurisdiction is reasonable, not whether the contested claims arise from or relate to the company's forum activities. The questions raised by BMS ... do not bear upon the issue of whether the nonresident plaintiffs' claims arise from or are related to BMS's activities in the forum state. Accordingly, we will examine these arguments using the criteria governing reasonableness.

Id., 1 Cal. 5th at 808, 377 P.3d at 891.

The California court's analysis of the fairness factors laid out by this Court in *World-Wide Volkswagen* was clear and accurate. Bristol-Myers Squibb failed to show that it was unduly burdened by the consolidation of litigation in California (as opposed to litigating in 34 different states), failed to disprove California's interest in adjudicating the dispute involving both numerous California claimants as well as a jointly liable California co-defendant, and failed to show that there was a more efficient alternative to going forward in a consolidated action in California. Such proof could have defeated jurisdiction, but Bristol-Myers Squibb lost that issue. Attempting to recast the identification of a connection between the issue in suit and the California forum as another "fairness" step misreads *Daimler AG*:

> ***First***, a court is to determine whether the connection between the forum and the episode-in-suit could justify the exercise of specific jurisdiction. ***Then, in a second step***, the court is to consider several additional factors to assess the reasonableness of entertaining the case.

Daimler AG, 134 S. Ct. at 762 (emphasis added). These are clearly two ***separate*** steps.

Blurring the lines between *Daimler AG*'s two steps may suit Bristol-Myers Squibb's agenda in this case, but it does great violence to the clarity of the process as laid out by this Court just three years ago in *Daimler AG*

D. When narrowing the scope of general jurisdiction, neither *Daimler AG* nor *Goodyear Dunlop Tires* evinced any

intention of neutering 28 U.S.C. § 1407 or Rule 23 (and other similar rules for aggregate treatment of claims under state and federal law); whether the application of rules for the aggregate treatment of related claims is jurisdictionally reasonable should be addressed as part of *Daimler AG*'s second step.

In this case, Bristol-Myers Squibb's Plavix flowed into California where it caused injury, the claims concern the nationwide promotion of Plavix associated with Bristol-Myers Squibb's California-based marketing staff, and those claims assert joint liability between Bristol-Myers Squibb and a California co-defendant Bristol-Myers Squibb contracted with, McKesson Corp. *Bristol-Myers Squibb*, 1 Cal. 5th at 788-89, 798, 803, 811, 377 P.3d at 877-78, 884, 888, 893. The California court correctly found that this connection between the claims in suit and the California forum was sufficient to proceed to the fairness analysis.

Bristol-Myers Squibb's arguments against simultaneously litigating the identical claims brought by non-California residents is an attack on all nationwide multi-district consolidated litigation. If the aggregation of claims was a Due Process violation, then Bristol-Myers Squibb's complaint has much broader implications than its petition acknowledges because nothing in the Due Process Clause exempts federal class actions or federal multi-district litigation. Moreover, nothing in this Court's most recent personal jurisdiction cases implies such a fundamental change in the law as to effectively forbid

nationwide consolidated litigation.[2] Yet – even in the absence of precedence – the unspoken assumption underlying Bristol-Myers Squibb's petition is that no court has the jurisdiction to litigate nationwide disputes involving two or more defendants which are at home in different states. If it were truly a Due Process violation for California to exercise jurisdiction over the parties in this dispute, then what other forum would the Due Process Clause permit to hear a nationwide dispute against both Bristol-Myers Squibb and McKesson Corp.?

II. THIS COURT SHOULD CLARIFY THAT ASSESSING SPECIFIC JURISDICTION IN PRODUCT CASES INCLUDES STREAM-OF-COMMERCE ANALYSIS.

Bristol-Myers Squibb holds this case out as an opportunity for the Court to clarify the standards for asserting specific personal jurisdiction in product cases. Yet Bristol-Myers Squibb's petition does not even address the application of the stream-of-commerce doctrine. How can this Court be expected to clarify the standards for asserting specific personal jurisdiction in product cases without addressing the stream of commerce?

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[2] For example, both *Daimler AG* and *Goodyear Dunlop Tires* repeatedly cite to *Jurisdiction to Adjudicate: A Suggested Analysis*, which advocates for an expansive view of specific jurisdiction to adjudicate multiparty matters calling for a unified resolution where defendants' commercial involvement in multistate activity harmed the claimants. *See* A. Von Mehren, D. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1161-71 (1966).

A. *World-Wide Volkswagen*

Thirty-eight years ago, this Court confirmed that a "forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297–98, 100 S. Ct. 559, 567 (1980). Obviously, this is exactly what Bristol-Myers Squibb did with regard to Plavix in the California forum.

World-Wide Volkswagen involved a vehicle made by Audi NSU Auto Union Aktiengesellschaft, imported to the US by Volkswagen of America, Inc., distributed in New York by World-Wide Volkswagen Corp., sold in New York by Seaway Volkswagen, Inc., and crashed in Oklahoma. *Id.*, 444 U.S. at 288, 100 S. Ct. at 562. This Court found these facts sufficient for Oklahoma to exercise jurisdiction over the manufacturer Audi and the importer Volkswagen but insufficient for the exercise of jurisdiction over the regional distributor World-Wide or seller Seaway:

> When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," *Hanson v. Denckla*, 357 U.S., at 253, 78 S.Ct., at 1240, it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a

> manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. ... ***But there is no such or similar basis for Oklahoma jurisdiction over World-Wide or Seaway in this case.***

Id., 444 U.S. at 297–98, 100 S. Ct. at 567 (emphasis added). In the case now before the Court, Bristol-Myers Squibb is in the position of the manufacturer (which was subject to jurisdiction) rather than regional distributor and seller (which were not subject to jurisdiction).

B. *Burger King*

This Court next addressed stream-of-commerce analysis in *Burger King Corp. v. Rudzewicz*, where the Court listed several reasons why a forum "does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum":

> A State generally has a "manifest interest" in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors. *Id.*, at 223, 78 S.Ct., at 201; see also *Keeton v. Hustler Magazine, Inc., supra,*

> 465 U.S., at 776, 104 S.Ct., at 1479. Moreover, where individuals "purposefully derive benefit" from their interstate activities, *Kulko v. California Superior Court,* 436 U.S. 84, 96, 98 S.Ct. 1690, 1699, 56 L.Ed.2d 132 (1978), it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 473–74, 105 S. Ct. 2174, 2182–83 (1985). This Court's analysis in the *Burger King* case is consistent with the California court's analysis in the case under review because the court noted (1) California's interest in providing a convenient forum, (2) Bristol-Myers Squibb has purposefully derived a benefit from its interstate activities, and (3) it is less burdensome for Bristol-Myers Squibb to litigate in California where it engages in significant economic activity.

C. *Asahi Metal Industry*

Two years later, the Court revisited the stream of commerce as a source of a product defendant's jurisdictionally significant contact with the forum in *Asahi Metal Indus. Co., Ltd. v. Superior Court of California,* which presented "the question whether the mere awareness on the part of a foreign defendant that the components it manufactured, sold, and delivered outside the United States would reach the forum State in the stream of commerce constitutes 'minimum contacts'

between the defendant and the forum State such that the exercise of jurisdiction 'does not offend "traditional notions of fair play and substantial justice."'" *Asahi Metal Indus. Co., Ltd. v. Superior Court of California, Solano County*, 480 U.S. 102, 105, 107 S. Ct. 1026, 1028–29 (1987) (O'Connor, J., plurality, quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945)). Justice O'Connor's four-judge plurality and Justice Brennan's four-judge concurrence reached the same answer to this question, but Justice O'Connor and Justice Brennan followed slightly different paths to the same conclusion. Justice O'Connor found the fact that a nonresident defendant placed its product into the stream of commerce to be a jurisdictionally significant fact that must be accompanied by some other additional (but not necessarily related) conduct directed toward the forum:

> The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.

Id., 480 U.S. at 112, 107 S. Ct. at 1032 (O'Connor, J., plurality). Justice Brennan agreed with Justice O'Connor that the exercise of jurisdiction over Asahi Metal would

violate the concept of fair play and substantial justice, but he disagreed with her formulation of the stream-of-commerce test as requiring proof of additional conduct:

> [Justice O'Connor] states that "a defendant's awareness that the stream of commerce may or will sweep the product into the forum State does not convert the mere act of placing the product into the stream into an act purposefully directed toward the forum State." *Ante,* at 1033. Under this view, a plaintiff would be required to show "[a]dditional conduct" directed toward the forum before finding the exercise of jurisdiction over the defendant to be consistent with the Due Process Clause. *Ibid.* I see no need for such a showing, however. The stream of commerce refers not to unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to distribution to retail sale. As long as a participant in this process is aware that the final product is being marketed in the forum State, the possibility of a lawsuit there cannot come as a surprise. Nor will the litigation present a burden for which there is no corresponding benefit. A defendant who has placed goods in the stream of commerce benefits economically from the retail sale of the final product in the forum State, and indirectly benefits from the State's laws that regulate and facilitate commercial activity. These benefits accrue regardless of whether that participant directly conducts business in

> the forum State, or engages in additional conduct directed toward that State. Accordingly, most courts and commentators have found that jurisdiction premised on the placement of a product into the stream of commerce is consistent with the Due Process Clause, and have not required a showing of additional conduct.

Id., 480 U.S. at 116–17, 107 S. Ct. at 1034–35 (Brennan, J., concurring).

Bristol-Myers Squibb is correct when it argues that there is a vigorous debate on the standards for assessing specific personal jurisdiction in product cases, but then Bristol-Myers Squibb misstates the scope and nature of that debate. In product liability cases, the key debate in the case law is between Justice O'Connor's stream-of-commerce-plus[3] standard and Justice Brennan's stream-of-

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[3] The First, Fourth, Sixth, Ninth, Tenth, and Eleventh Circuits have decisions that favor Justice O'Connor's stream-of-commerce-plus formulation. *See, e.g., Boit v. Gar-Tec Products, Inc.*, 967 F.2d 671, 683 (1st Cir. 1992); *Lesnick v. Hollingsworth & Vose Co.*, 35 F.3d 939, 945 (4th Cir. 1994); *Bridgeport Music, Inc. v. Still N The Water Pub.*, 327 F.3d 472 (6th Cir. 2003); *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007); *Federated Rural Elec. Ins. Corp. v. Kootenai Elec. Co-op.*, 812 F. Supp. 1139, 1144 (D. Kan. 1993), *aff'd*, 17 F.3d 1302 (10th Cir. 1994); *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534 (11th Cir.1993).

commerce[4] standard. Either of these standards subsumes the discussion of the "relatedness" of the defendant's contacts with the forum because the placement of the product into the stream of commerce with the intention of directly or indirectly serving the forum is the minimum contact which serves as the predicate for proceeding on to the fairness analysis (regardless of whether the Court follows Justice O'Connor's formulation of the test or Justice Brennan's). Bristol-Myers Squibb's efforts to graft a conduct-focused analysis from non-product cases into the specific personal jurisdiction standard for product cases makes little sense because product liability focuses on the product and not the defendant's conduct. *See, e.g., Moeller v. Garlock Sealing Techs., LLC*, 660 F.3d 950, 957 (6th Cir. 2011) ("strict tort liability shifts the focus from the conduct of the manufacturer to the nature of the product"); *Stupak v. Hoffman-La Roche, Inc.*, 326 Fed. Appx. 553, 557 (11th

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[4] The Fifth, Seventh, Eighth, and D.C. Circuits employ Justice Brennan's stream-of-commerce formulation. *See, e.g., Eddy v. Printers House (P) Ltd.*, 627 Fed. Appx. 323, 326 (5th Cir. 2015); *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 947 (7th Cir.1992); *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 615 (8th Cir. 1994), *cert. den.*, 513 U.S. 948 (1994); *Burman v. Phoenix Worldwide Industries, Inc.*, 437 F. Supp. 2d 142 (D.D.C. 2006). The Second, Third, and Federal Circuits have opinions recognizing both stream-of-commerce and stream-of-commerce-plus analysis, but these Circuits have not yet decided between the two models. *See, e.g., Kernan v. Kurz-Hastings, Inc.*, 175 F.3d 236, 244 (2d Cir. 1999); *Pennzoil Products Co. v. Colelli & Associates, Inc.*, 149 F.3d 197, 205 (3d Cir. 1998); *Polar Electro Oy v. Suunto Oy*, 829 F.3d 1343, 1349 (Fed. Cir. 2016).

Cir. 2009) ("strict products liability focuses not on the defendant's conduct, but on the nature of the defendant's product"); *Binakonsky v. Ford Motor Co.*, 133 F.3d 281, 285 (4th Cir. 1998) ("a strict liability action focuses not on the conduct of the manufacturer but rather on the product itself"); *Wheeler v. John Deere Co.*, 862 F.2d 1404, 1411 (10th Cir. 1988) ("strict liability actions ... focus not on the reasonableness of a defendant's conduct but on the product"); *Toner for Toner v. Lederle Labs., a Div. of Am. Cyanamid Co.*, 828 F.2d 510, 512 (9th Cir. 1987) ("negligence focuses upon the conduct of the manufacturer while strict liability focuses upon the product and the consumer's expectation); *Kehm v. Procter & Gamble Mfg. Co.*, 724 F.2d 613, 621 (8th Cir. 1983) ("in negligence cases the inquiry focuses on the reasonableness of the defendant's conduct, in typical products liability cases the inquiry focuses not on the defendant's conduct but on the safety of the product").

D. *Goodyear Dunlop Tires*

This Court next addressed the issue in *Goodyear Dunlop Tires*, where the Court reiterated the point that many states "exercise specific jurisdiction over manufacturers when the events in suit, or some of them, occurred within the forum" if "a nonresident defendant, acting outside the forum, places in the stream of commerce a product that ultimately causes harm inside the forum":

> The stream-of-commerce cases ... relate to exercises of specific jurisdiction in products liability actions, in which a nonresident defendant, acting outside the forum, places in the stream of commerce a product that

> ultimately causes harm inside the forum. Many state long-arm statutes authorize courts to exercise specific jurisdiction over manufacturers when the events in suit, or some of them, occurred within the forum State. ... Flow of a manufacturer's products into the forum may bolster an affiliation germane to ***specific*** jurisdiction, *see, e.g., World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490....

Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S. Ct. 2846, 2849 (2011). This is a fair summary of the specific jurisdiction law as applied to product cases since 1980. Bristol-Myers Squibb does not want a "clarification" of this standard; Bristol-Myers Squibb wants a new standard because it cannot prevail under this specific jurisdiction test as clearly set forth in *Goodyear Dunlop Tires.*

E. *J. McIntyre Machinery*

On the same day as the *Goodyear Dunlop Tires* decision, this Court further addressed specific jurisdiction for product cases in *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 131 S. Ct. 2780 (2011). As with the earlier *Asahi Metal* case, no opinion achieved a majority of support. Justice Kennedy's plurality opinion in *J. McIntyre* held that jurisdiction is properly premised on placing goods into the stream of commerce where the manufacturer uses a distributor to seek to serve the forum state's market by sending its goods to that market:

This Court has stated that a defendant's placing goods into the stream of commerce "with the expectation that they will be purchased by consumers within the forum State" may indicate purposeful availment. *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) (finding that expectation lacking). But that statement does not amend the general rule of personal jurisdiction. It merely observes that a defendant may in an appropriate case be subject to jurisdiction without entering the forum—itself an unexceptional proposition—as where manufacturers or distributors "seek to serve" a given State's market. *Id.*, at 295, 100 S.Ct. 559. The principal inquiry in cases of this sort is whether the defendant's activities manifest an intention to submit to the power of a sovereign. In other words, the defendant must "purposefully avai[l] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson, supra,* at 253, 78 S.Ct. 1228; *Insurance Corp., supra,* at 704–705, 102 S.Ct. 2099 ("[A]ctions of the defendant may amount to a legal submission to the jurisdiction of the court"). Sometimes a defendant does so by sending its goods rather than its agents. The defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a general rule, it is not enough that the defendant might have

> predicted that its goods will reach the forum State.

J. McIntyre, 564 U.S. at 882, 131 S. Ct. at 2788 (Kennedy, J., plurality). This is precisely what Bristol-Myers Squibb did regarding its Plavix-related contracts with co-defendant distributor, McKesson Corp., and its other California connections. There can be no doubt that Bristol-Myers Squibb's activities manifest an intention to submit to the power of California's courts because Bristol-Myers Squibb does not dispute the jurisdiction of the California courts to hear the claims of the California residents.

In contrast to Justice Kennedy's focus on whether the placement of products into the stream of commerce manifests an intent to submit to the power of a sovereign forum in order to serve (and benefit from) that forum's market, Justice Ginsberg's dissent (joined by Justices Sotomayor and Kagan) analyzed the stream of commerce through the lens of fairness:

> "Th[e] 'purposeful availment' requirement," this Court has explained, simply "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts." *Burger King*, 471 U.S., at 475, 105 S.Ct. 2174. .... Courts, both state and federal, confronting facts similar to those here, have rightly rejected the conclusion that a manufacturer selling its products across the USA may evade jurisdiction in any and all States, including the State where its defective product is distributed and causes injury. They have

held, instead, that it would undermine principles of fundamental fairness to insulate the foreign manufacturer from accountability in court at the place within the United States where the manufacturer's products caused injury. See, *e.g.*, *Tobin v. Astra Pharmaceutical Prods., Inc.*, 993 F.2d 528, 544 (C.A.6 1993); *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 573, 892 P.2d 1354, 1362 (1995) .... *World–Wide Volkswagen* concerned a New York car dealership that sold solely in the New York market, and a New York distributor who supplied retailers in three States only: New York, Connecticut, and New Jersey. 444 U.S., at 289, 100 S.Ct. 559. New York residents had purchased an Audi from the New York dealer and were driving the new vehicle through Oklahoma en route to Arizona. On the road in Oklahoma, another car struck the Audi in the rear, causing a fire which severely burned the Audi's occupants. *Id.*, at 288, 100 S.Ct. 559. Rejecting the Oklahoma courts' assertion of jurisdiction over the New York dealer and distributor, this Court observed that the defendants had done nothing to serve the market for cars in Oklahoma. *Id.*, at 295–298, 100 S.Ct. 559. ... Notably, the foreign manufacturer of the Audi in *World–Wide Volkswagen* did not object to the jurisdiction of the Oklahoma courts and the U.S. importer abandoned its initially stated objection. 444 U.S., at 288, and n. 3, 100 S.Ct. 559. And most relevant here, the Court's opinion indicates that an objection to

> jurisdiction by the manufacturer or national distributor would have been unavailing. To reiterate, the Court said in *World–Wide Volkswagen* that, when a manufacturer or distributor aims to sell its product to customers in several States, it is reasonable "to subject it to suit in [any] one of those States if its allegedly defective [product] has there been the source of injury." *Id.*, at 297, 100 S.Ct. 559.

Id., 564 U.S. at 905–07, 131 S.Ct. at 2801-02 (Ginsberg, J., dissenting). Under Justice Ginsberg's formulation of the stream-of-commerce analysis, Bristol-Myers Squibb's nationwide marketing of Plavix constitutes the purposeful availment of the California market to a degree that haling Bristol-Myers Squibb into the California court system is not based on a mere random contact with the forum.

In juxtaposition to Justice Kennedy's emphasis on the stream of commerce as a reflection of acquiescence to sovereignty and Justice Ginsberg's focus on the stream of commerce in the context of fairness, Justice Breyer's concurrence (joined by Justice Alito) highlighted the stream of commerce's more practical applications:

> Mr. Nicastro, who here bears the burden of proving jurisdiction, ... has not ... shown that the British Manufacturer "purposefully avail[ed] itself of the privilege of conducting activities" within New Jersey, or that it delivered its goods in the stream of commerce "with the expectation that they will be purchased" by New Jersey users. *World–Wide*

> *Volkswagen, supra,* at 297–298, 100 S.Ct. 559 (internal quotation marks omitted).... Accordingly, on the record present here, resolving this case requires no more than adhering to our precedents ... The plurality seems to state strict rules that limit jurisdiction where a defendant does not "inten[d] to submit to the power of a sovereign" and cannot "be said to have targeted the forum." *Ante,* at 2788. But what do those standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through popup advertisements that it knows will be viewed in a forum? Those issues have serious commercial consequences but are totally absent in this case.

Id., 564 U.S. at 888–90, 131 S. Ct. at 2792-93 (Breyer, J., concurring). Justice Breyer's focus on the practical applications of stream-of-commerce analysis recognized that a one-size-fits-all approach might not be equally fair to both large companies and smaller companies alike:

> What might appear fair in the case of a large manufacturer which specifically seeks, or expects, an equal-sized distributor to sell its product in a distant State might seem unfair in the case of a small manufacturer (say, an

> Appalachian potter) who sells his product (cups and saucers) exclusively to a large distributor, who resells a single item (a coffee mug) to a buyer from a distant State (Hawaii). ... It may be that a larger firm can readily "alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *World–Wide Volkswagen, supra,* at 297, 100 S.Ct. 559. But manufacturers come in many shapes and sizes. It may be fundamentally unfair to require a small Egyptian shirt maker, a Brazilian manufacturing cooperative, or a Kenyan coffee farmer, selling its products through international distributors, to respond to products-liability tort suits in virtually every State in the United States, even those in respect to which the foreign firm has no connection at all but the sale of a single (allegedly defective) good.

Id., 564 U.S. at 891–92, 131 S. Ct. at 2793-94. Under Justice Breyer's analysis, the fact that Bristol-Myers Squibb is a multinational pharmaceutical conglomeration as opposed to a small Appalachian potter or Kenyan coffee farmer calls for a Due Process and fairness analysis that reflects Bristol-Myers Squibb's enhanced role in (and benefit from) the stream of commerce.

Regardless of whether the Court looks to Justice Kennedy's submission-to-sovereignty view of the stream of commerce, or Justice Ginsberg's focus on the stream of commerce through the lens of fairness, or Justice Breyer's

practical view of the stream of commerce, *J. McIntyre*'s various forms of stream-of-commerce analysis all take the place of any "relatedness" analysis that typifies the jurisdictional scrutiny of some intentional tort cases.

F. *Daimler AG*

Three years later, the Court went on to repeat that the "rapid expansion of tribunals' ability to hear claims against out-of-state defendants when the episode-in-suit occurred in the forum or the defendant purposefully availed itself of the forum" reflects the development of "specific jurisdiction [as] ... a considerably more significant part of" jurisdictional analysis, citing *Asahi Metal* and *World–Wide Volkswagen* among other cases:

> *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 112, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987) (opinion of O'Connor, J.) (specific jurisdiction may lie over ***a foreign defendant that places a product into the "stream of commerce" while also*** "designing the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or ***marketing the product through a distributor who has agreed to serve as the sales agent in the forum State***"); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980) ("[I]f the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated

> occurrence, but arises from the efforts of the manufacturer or distributor to serve, ***directly or indirectly***, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others."); ...

Daimler AG v. Bauman, 134 S. Ct. 746, 755 n. 7, 187 L. Ed. 2d 624 (2014) (emphasis added). In this context, the *Daimler AG* decision confirmed that "the placement of a product into the stream of commerce 'may bolster an affiliation germane to ***specific*** jurisdiction.'" *Id.*, 134 S. Ct. at 757 (quoting *Goodyear Dunlop Tires*, 131 S. Ct. at 2849).

Under the clear two-part test discussed in the *Daimler AG* decision, the connection between the California forum and the claims in suit involving Plavix placed into the stream of commerce in California and also involving marketing associated with the California sales representatives is a sufficient basis to reach the fairness concerns which are part of the separate step in the process. *See id.*, 134 S. Ct. at 762. Under *Daimler AG*'s second separate fairness step, none of the factors show an unfair burden on Bristol-Myers Squibb that outweighs the greater efficiency achieved by trying the related claims in the California courts. Bristol-Myers Squibb wants this Court to adopt a new test simply because it does not prevail under the tests this Court has consistently applied for decades.

G. From *World-Wide Volkswagen* through *Daimler AG*, the stream of commerce has continuously defined the "relatedness" of a forum to cases against product defendants.

For 38 years, this Court has recognized the propriety of exercising jurisdiction based on the placement of a product into the stream of commerce where that product has then caused harm in a forum where the defendant has deliberately and repeatedly serviced that forum's market. In *World-Wide Volkswagen*, the placement of the product into the stream of commerce where it caused harm in the forum directly or indirectly serviced by the defendant was followed immediately by a separate fairness analysis. Likewise, under Justice O'Connor's view of *Asahi Metal*, the demand for "more" in addition to the stream-of-commerce analysis (the same "more" which was a feature of the fairness step in *World-Wide Volkswagen*) was appended onto her stream-of-commerce-plus analysis but was never intended to replace the stream-of-commerce analysis. *Asahi Metal*, 480 U.S. at 112, 107 S. Ct. at 1032 (O'Connor, J., plurality). Stream-of-commerce analysis has a similar place in Justice Kennedy's submission-to-a-sovereign concept. *J. McIntyre*, 564 U.S. at 882, 131 S. Ct. at 2788 (Kennedy, J., plurality). *Daimler AG* (building on *Goodyear Dunlop Tires* before it) has reconfirmed a clear two-step framework in which the stream-of-commerce provides the connection to the forum combined with a separate second Due Process step to safeguard against any unfairness potentially arising from a small defendant that infrequently sells its products in the forum's market.

Notwithstanding almost four decades of stream-of-commerce analysis, Bristol-Myers Squibb would have this Court rewrite the boundaries of specific personal jurisdiction (and erase national class actions, multidistrict litigation, and mass torts involving defendants at home in different states) by replacing stream-of-commerce analysis

tempered by fairness considerations with a new "relatedness" doctrine extended as a novelty to product cases. This Court should pass on Bristol-Myers Squibb's invitation.

III. THIS COURT SHOULD CLARIFY THAT THE TEST FOR SPECIFIC PERSONAL JURISDICTION IN PRODUCT CASES IS A HOLISTIC STANDARD THAT BALANCES THE FAIRNESS TO ALL PARTIES, INCLUDING CLAIMANTS AND LOCAL DEFENDANTS AS WELL AS MULTI-NATIONAL DEFENDANTS.

The consensus among Justice Breyer's *J. McIntyre* concurrence (joined by Justice Alito) and Justice Ginsberg's dissent (joined by Justices Kagan and Sotomayor) suggests that multinational product defendants have benefited sufficiently from the nation's markets such that their fairness analysis should accommodate more responsibility than the level which would unfairly burden a small Appalachian pottery maker.

Yet this proportionality should not be limited to Appalachian pottery makers. In many states, when a product manufacturer finds a way to escape the courts' jurisdiction, then the local retailer stands in the shoes of the absent manufacturer.[5] Large national or global

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[5] The Uniform Product Liability Act proposes that local retailers should generally not be responsible for defective products they sell without knowledge of the defect unless the courts cannot obtain jurisdiction over the nonresident manufacturer, in which circumstance the seller becomes

companies like Bristol-Myers Squibb cannot simply shirk their jurisdictional responsibilities without visiting consequences upon the local businesses left to stand in the manufacturer's shoes. Allowing Bristol-Myers Squibb to evade jurisdiction either will lead to a misallocated financial burden sloughed off from Bristol-Myers Squibb to the shoulders of local businesses who remain subject to the courts' jurisdiction or will lead to indemnification litigation which would undermine efficiency by letting Bristol-Myers Squibb out of the courts' front door only to bring Bristol-Myers Squibb back into the dispute through a side door. Neither alternative is satisfactorily efficient.

Instead of creating a new standard for specific personal jurisdiction in product cases, as Bristol-Myers

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liable in the manufacturer's place. *See* Model Unif. Prod. Liab. Act § 105c, 44 Fed. Reg. 62,714, 62,726 (Oct. 31, 1979). This model has been followed by numerous states, including Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, New Jersey, North Carolina, North Dakota, Ohio, Tennessee, Texas, Washington, and others. *See, e.g.*, Colo. Rev. Stat. § 13-21-402; Del. Code Ann. tit. 18, § 7001(c)(2); Idaho Code Ann. § 6-1407(4)(a); 735 Ill. Comp. Stat. 5/2–621(b)(3); Ind. Code Ann. § 34-20-2-4; Iowa Code Ann. § 613.18; Kan. Stat. Ann. § 60-3306 (b)(3)(C); Ky. Rev. Stat. Ann. § 411.340; La. Stat. Ann. § 9:2800.53(1)(d); Md. Code Ann., Cts. & Jud. Proc. § 5-405(c)(1); Minn. Stat. Ann. § 544.41(2)(3); Mo. Rev. Stat. § 537.762(2); N.J. Stat. Ann. § 2A:58C-9(c)(2); N.C. Gen. Stat. Ann. § 99B-2; N.D. Cent. Code § 28-01.3-04(2); Ohio Rev. Code Ann. § 2307.78(B)(1); Tenn. Code Ann. § 29-28-106(4); Tex. Civ. Prac. & Rem. Code § 82.003(a)(7)(B); Wash. Rev. Code Ann. § 7.72.040(2)(a).

Squibb proposes, this Court should simply apply the same fairness standards as the Court has applied for decades:

> Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, see *McGee v. International Life Ins. Co.*, 355 U.S. 220, 223, 78 S.Ct. 199, 201, 2 L.Ed.2d 223 (1957); the plaintiff's interest in obtaining convenient and effective relief, see *Kulko v. California Superior Court, supra*, 436 U.S., at 92, 98 S.Ct., at 1697, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, cf. *Shaffer v. Heitner*, 433 U.S. 186, 211, n. 37, 97 S.Ct. 2569, 2583, n. 37, 53 L.Ed.2d 683 (1977); the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies, see *Kulko v. California Superior Court, supra*, 436 U.S. at 93, 98, 98 S.Ct., at 1697, 1700.

World-Wide Volkswagen, 444 U.S. at 292, 100 S. Ct. at 564–65. Jurisdiction is reasonable under these well-accepted standards, and California's exercise of jurisdiction should be affirmed.

CONCLUSION

The Court should reaffirm that specific jurisdiction should be assessed using the two-step process recently reconfirmed in *Daimler AG*. In answering the first question about whether the connection between the forum and the episode-in-suit could justify specific jurisdiction, the Court should reconfirm that – in product cases – this question is appropriately answered in light of four decades of this Court's decisions confirming that a manufacturer which regularly places its product into the stream of commerce intending to serve the forum's market has established contacts that could justify specific jurisdiction. Finally, when answering the second question about the five *World-Wide Volkswagen* fairness factors to assess the reasonableness of entertaining jurisdiction, the Court should confirm that reasonableness as applied to a massive global manufacturer with extensive operations in all fifty states, including the forum, should be a more accommodating to accepting jurisdiction than a small Appalachian potter or Kenyan coffee farmer.

Respectfully submitted,

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